

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 18-021-19-1-5-01025-19
Petitioner: Joell S. Gorman
Respondent: Delaware County Assessor
Parcel: 18-14-16-100-002.000-021
Assessment Year: 2019

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated her 2019 assessment appeal with the Delaware County Assessor on June 12, 2019.
2. On September 27, 2019, the Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) lowering the assessment, but not to the level requested by the Petitioner.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On March 4, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ) held the Board's administrative hearing. Neither the Board nor the ALJ inspected the property.
5. Joell Gorman appeared *pro se* and was sworn. County employee Abigail McDaniel appeared for the Respondent and was sworn.

Facts

6. The property under appeal is a single-family residence with a pole barn and utility shed situated on 4.48 acres and located at 10010 South County Road 700 West in Daleville.
7. The PTABOA determined a total assessment of \$133,700 (land \$24,200 and improvements \$109,500).
8. On her Form 131 the Petitioner requested a total assessment of \$124,000 (land \$24,200 and improvements \$99,800).

Record

9. The official record for this matter is made up of the following:
- a) A digital recording of the hearing.
 - b) Exhibits:¹
 - Respondent Exhibit 1: 2018 subject property record card,
 - Respondent Exhibit 2: 2019 subject property record card,
 - Respondent Exhibit 3: 2019 Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),
 - Respondent Exhibit 4: 2019 Form 115,
 - Respondent Exhibit 5: 2019 “Special Message to Property Owner,”
 - Respondent Exhibit 6: Spreadsheet of sales used in 2019 trending.
 - c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Contentions

10. Summary of the Petitioner’s case:
- a) The subject property is over-assessed. The PTABOA reduced the 2019 land assessment, but the improvement value remained at \$109,500. The assessment of the improvements increased roughly 10% between 2018 and 2019. According to the Petitioner, the structures, especially the home, have not been improved enough to justify a 10% increase. The 2019 total assessment should be reduced to “\$120,000 maybe \$125,000.” *Gorman testimony.*
 - b) The Petitioner purchased the property in 1999. During the 2019 appeal process, the PTABOA reclassified a portion of her land to agricultural. The Petitioner argues for “almost 20 years” she has paid taxes on the wrong assessed value because her land was classified incorrectly. *Gorman testimony.*
 - c) The property also suffers from water problems with “the land holding so much water.” To address this issue, the Petitioner has been communicating with local officials since 2007, but to no avail. *Gorman testimony.*
 - d) Finally, the Respondent erred by assigning a quality grade of D+2 to her home. The Petitioner argues her home is deteriorating and on the “borderline of becoming an E

¹ The Petitioner did not offer any exhibits.

grade,” therefore the grade should be changed, and the assessment be reduced.
Gorman testimony.

11. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. The portion of the assessment attributed to the improvements increased because the trending factor rose from 1.152 in 2018 to 1.265 in 2019. *McDaniel testimony; Resp’t Ex. 1, 2, 4, 6.*
- b) The neighborhood sales data used for trending indicates an average increase of \$22,200 when comparing the 2018 sales to the 2018 assessments. Based on the sales’ data, the average 2019 assessment increased by \$12,200. *McDaniel testimony; Resp’t Ex. 6.*
- c) Other than trending, the assessment of the structures listed on the property record card have not changed. The home continues to be listed in average condition with a quality grade factor of D+2. The property includes a utility shed site valued at \$500 and a pole barn in average condition with a quality grade factor of D. *McDaniel testimony; Resp’t Ex. 1, 2.*
- d) The PTABOA did reclassify 2.82 acres of the Petitioner’s land from residential excess acreage to agricultural land in 2019. A 30% negative influence factor was also applied to the agricultural land to account for water issues. As a result of the land reclassification, the total 2019 assessment is lower than the 2018 assessment. *McDaniel testimony; Resp’t Ex. 1, 2, 3, 4.*
- e) The Petitioner’s “summary of your taxes” indicates the Petitioner’s taxes increased between 2018 and 2019 because the town of Daleville had a significant increase in county, township, and school tax rates. The county tax rate increased 9.75%, the township tax rate increased 11.18% and the school tax rate increased 11.61%, amounting to approximately \$150 in additional taxes.² *McDaniel testimony; Resp’t Ex. 5.*
- f) In response to questioning, Ms. McDaniel testified the county uses a mile radius to establish neighborhoods for trending and assigning neighborhood codes. For example, properties across the street or next door to the subject property would normally be assigned the same neighborhood code and be included in the trending analysis if they sold in 2018. *McDaniel testimony.*
- g) The Petitioner also questioned why some “taxes went down, and their houses are much nicer.” In response, Ms. McDaniel stated properties are evaluated on a case by case basis and some may have had errors on their property record card that were corrected, resulting in a reduction of the assessed value. *McDaniel testimony.*

² The Petitioner’s summary of your taxes indicates the actual increase in taxes is \$153.70. *Resp’t Ex. 5.*

Burden of Proof

12. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exceptions to that rule.
13. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
14. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
15. Here, according to the subject property record card, the total assessed value decreased from \$139,700 in 2018 to \$133,700 in 2019. The Petitioner argued that according to the “assessment papers” she received the assessment increased by more than 5%. The Respondent explained the original 2019 assessment was \$149,400, but the PTABOA reduced the total assessment to \$133,700. Accordingly, the total 2019 assessment of record is \$133,700. Because the assessment of record decreased between 2018 and 2019, the ALJ made the preliminary ruling that the burden remains with the Petitioner, a ruling the Board adopts. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

16. The Petitioner failed to make a prima facie case for reducing the assessment.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs,

sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

- b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For a 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
- c) The subject property is a mixed agricultural-residential property making the assessment multifaceted. The Department of Local Government Finance (DLGF) promulgated guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Ch. 2 at 77-78; Ind. Code § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. They also classify agricultural land into various types. Depending on the classification, assessors may then apply influence factors in predetermined amounts. *See* 2011 GUIDELINES, Ch. 2 at 85-96, 98-100. Thus, for agricultural land, true tax value is the amount determined by applying the Guidelines.
- d) The 2011 Real Property Assessment Guidelines define land that floods into three tillable land subtypes:

Type 41 [L]and flooded occasionally-damaging floods occur two to four times in a ten-year period. A 30% influence factor deduction applies to this land use type. Type 42 [L]and flooded severely-damaging floods occur five times or more in a ten-year period. A 50% influence factor deduction applies to this land use type. Type 43 [F]armed wetlands-land that the U.S. Department of Agriculture has designated as farmed wetlands. This land type applies only to areas of contiguous land measuring 2.5 acres or more. This land use type must be verified through records obtained from the U.S. Department of Agriculture, Farm Service Agency. A 50% influence factor deduction applies to this land use type.

2011 GUIDELINES, CH. 2 at 89.

- e) As part of determining true tax value, the Guidelines allow one acre per dwelling on agricultural property, which is classified as an agricultural homesite. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Ch. 2 at 93. The homesite makes up a portion of a property's land value. Also, areas containing a large manicured yard above the accepted one-acre homesite is classified as residential or agricultural excess acreage. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Ch. 2 at 54, 59 & 93. Unlike other

subtypes of agricultural land, a homesite, residential and agricultural excess acreage true tax values cannot be established on appeal by applying the Guidelines. Instead, a party needs to offer probative market-based evidence. In this case, the Petitioner did not challenge the assessments of the one-acre homesite or the residential excess acreage.

- f) Instead it appears the Petitioner is challenging the negative influence factor applied to 2.82 acres of agricultural land. There is no dispute between the parties that a portion of the property suffers from water problems. Accordingly, the Assessor applied a 30% negative influence factor to a portion of the property to account for the water problem. It was the Petitioner's burden to prove to the Board the property was assessed incorrectly. The Petitioner argued that a portion of the property holds water and that she had attempted to contact several local officials over the years to address this issue. But based on the testimony and evidence provided, the Petitioner failed to prove the Assessor incorrectly assessed the property. Further, the Petitioner failed to quantify the impact the water problems have on the value of the property. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).
- g) Next, the Petitioner argued the Assessor made errors in determining the quality grade factor and condition of the home. Even if the Assessor made errors, simply attacking the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To make a case, a taxpayer must show the current assessment does not accurately reflect the subject property’s market value-in-use. *Id*; *see also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is). Additionally, to successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id*. Here, the Petitioner failed to provide any probative market-based evidence as to market value-in-use. The Petitioner argued the assessment should be “\$120,000 maybe \$125,000” but again failed to present any probative market-based evidence to support either value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). For these reasons, the Petitioner failed to make a prima facie case for reducing the assessment.
- h) Finally, the Petitioner requested the Board refund “almost 20 years” of overpaid taxes on her land assessment. The Board is a creation of the Indiana Legislature, and it only has those powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002). Indiana Code § 6-1.5-4-1 identifies the subject matter the Board is authorized to address, and provides as follows:

- (a) The Indiana Board shall conduct impartial reviews of all appeals concerning:
- (1) the assessed valuation of tangible property;
 - (2) property tax deductions;
 - (3) property tax exemptions;
 - (4) property tax credits;
- that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.

Ind. Code § 6-1.5-4-1.

- i) The Petitioner failed to cite to any legal authority for the Board's purported duty to calculate refunds.³ Indiana Code § 6-1.1-26-2.1 outlines the requirements for obtaining a refund. Ultimately, the Board lacks jurisdiction to grant the Petitioner any relief regarding her refund request.
- j) Where the Petitioner has not supported her claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Petitioner failed to make a prima facie case for reducing the 2019 assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2019 assessment.

ISSUED: May 28, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

³ Even if the Board were able to consider the Petitioner's request for refunds, the only year we would be able to consider is the 2019 assessment year before us.

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.